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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA902

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy's

Mission Activities at the Naval Surface Warfare Center Panama City Division

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued a one-year Letter of Authorization (LOA), followed by a revised LOA that is valid for two years, to take marine mammals by harassment incidental to the U.S. Navy's Research, Development, Test and Evaluation (RDT&E) mission activities at the Naval Surface Warfare Center Panama City Division (NSWC PCD) to the Commander, U.S. Naval Surface Warfare Center Panama City Division, 110 Vernon Avenue, Panama City, FL 32407-7001 and persons operating under his authority.

DATES: Effective from January 21, 2012, through January 20, 2014.

ADDRESSES: Copies of the Navy's September 1, 2011, LOA application, the LOA, the Navy's 2011 marine species monitoring report and the Navy's 2011 annual mission activities report are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver

Spring, MD 20910, by telephoning the contact listed here (SEE FOR FURTHER INFORMATION CONTACT), or online at:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS (301) 427-8418.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 et seq.) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's RDT&E activities at the NSWC PCD were published on January 21, 2010 (75 FR 3395), and

remain in effect through January 21, 2015. They are codified at 50 CFR part 218 subpart S. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the Navy's RDT&E activities. For detailed information on these actions, please refer to the January 21, 2010 Federal Register notice and 50 CFR part 218 subpart S.

On February 1, 2012, NMFS published a final rule (77 FR 4917) that allows for the issuance of multi-year LOAs, as long as the regulations governing such LOAs are valid.

#### Summary of LOA Request

NMFS received an application from the U.S. Navy for an LOA covering the Navy's RDT&E activities at NSWC PCD off the US Gulf of Mexico under the regulations issued on January 21, 2010 (75 FR 3395). The application requested authorization, for a period of two years, to take, by harassment, marine mammals incidental to proposed RDT&E activities that involve underwater explosive detonation, projectile firing, and sonar testing.

#### Summary of Activity under the 2011 LOA

As described in the Navy's activities report, which covered the period between August 2, 2010, and August 1, 2011, the RDT&E activities conducted by the Navy were within the scope and amounts contemplated by the final rule. None of the testing events exceeded the average annual allotment authorized under the rule. No test activities involving underwater explosive detonations and projectile firing were conducted during the reporting period.

As shown in Tables 1 and 2, most of the mid-frequency active sonar (MFAS) and high-frequency active sonar (HFAS) testing events were far below the levels authorized in the annual LOA.

Table 1. Total annual number of each type of MFAS and HFAS listed at 50 C.F.R. §218.180 conducted in the NSWC PCD Study Area in territorial waters (number authorized vs. conducted).

Sonar System	Number Authorized (hrs)	Number Conducted (hrs)
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AN/SQS-53/56 Kingfisher	3	0
Sub-bottom profiler (2-9 kHz)	21	0
REMUS SAS-LF	12	1
REMUS Modem	25	20.8
Sub-bottom profiler (2-16 kHz)	24	8
AN/SQQ-32	30	0
REMUS-SAS-LF	20	17.8
SAS-LF	35	34
AN/WLD-1RMS-ACL	33.5	0
BPAUV Sidescan	25	9
TVSS	15	0
F84Y	15	0
BPAUV Sidescan	25	0
REMUS-SAS-HF	10	10
SAS-HF	11.5	8
AN/AQS-20	545	269.57
AN/WLD-11 RMS Navigation	15	4
BPAUV Sidescan	30	0.1

Table 2. Total annual number of each type of MFAS and HFAS listed at 50 C.F.R. §218.180 conducted in the NSW PCD Study Area in non-territorial waters (number authorized vs. conducted).

Sonar System	Number Authorized (hrs)	Number Conducted (hrs)
AN/SQS-53/56 Kingfisher	1	0
Sub-bottom profiler (2-9 kHz)	1	0
REMUS Modem	12	0
Sub-bottom profiler (2-16 kHz)	1	0
AN/SQQ-32	1	0
SAS-LF	15	0
AN/WLD-1RMS-ACL	5	0
BPAUV Sidescan	38	8
TVSS	16.5	8
F84Y	15	0
REMUS-SAS-HF	25	0
SAS-HF	15	0
AN/AQS-20	15	11
BPAUV Sidescan	25	0

### Planned Activities for 2012 and 2013

In 2012 and 2013, the Navy expects to conduct the same type and amount of RDT&E activities identified in the final rules and 2011 LOA. No modification is proposed by the Navy for its planned 2012 - 2013 activities under the 2010 rule.

### Estimated Take for 2012 - 2013

The estimated takes for the Navy's proposed 2012 RDT&E activities are the same as those in authorized in 2011. No change has been made in the estimated takes from the 2011 LOA.

Summary of Monitoring, Reporting, and other requirements under the 2009 LOA

#### Annual Mission Activities Report

The Navy submitted their 2011 annual mission activities report covering the period from August 2, 2010, through August 1, 2011 within the required timeframes and it is posted on NMFS website: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. NMFS has reviewed the report and it contains the information required by the 2011 LOA. The report lists the amount of hours sonar testing was conducted during the reporting period. During this time period, NSWC PCD conducted 409.27 hours of sonar testing, 382.27 hours in territorial waters (Table 1) and 27 hours in non-territorial waters (Table 2). No RDT&E activities associated with underwater detonations were conducted during this period.

#### Monitoring and Annual Monitoring Reports

The Navy submitted a marine species monitoring report within the required timeframes and it is posted on NMFS website:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. The monitoring report covers the period between August 2, 2010, and August 1, 2011. NSWC PCD conducted two aerial monitoring events for tests of the AN/AQS-20 sonar system during the reporting period. Observers searched for and subsequently recorded any present cetacean and sea turtle species during pre-test, during-test, and post-test monitoring for both sonar events. No stranded or injured marine mammals or sea turtles were observed during either aerial monitoring effort.

Aerial monitoring was conducted July 5 – 9, 2011, in good to fair sighting conditions, with all sightings made in Beaufort sea states between 1 and 4. The monitoring included two – re-test flights; two flights during the test; and one post-test flight. Focal follow behavioral data were collected during two of the sightings. Observers visually surveyed 2,067 km (1,116 nm) of systematic (on-effort) trackline and 2,749 km (1,484 nm) of total trackline during five days for approximately 14.3 hours of total survey effort. Twenty-one cetacean sightings were recorded: thirteen groups of bottlenose dolphins; one group of Atlantic spotted dolphins; and seven groups of unidentified dolphins.

The second monitoring event took place July 23 – 26, 2011, in good to fair sighting conditions, with sightings made in Beaufort sea states between 1 and 4. This monitoring included two pre-test flights; one flight during the test; and one post-test flight. Focal follow behavioral data were collected during two of the sightings. Observers visually surveyed 1,475 km (796 nm) of systematic (on-effort) trackline and 1,937 km (1,046 nm) of total trackline during four days for approximately 7.8 hours of total survey effort. Seventeen cetacean sightings were recorded: fifteen groups of bottlenose dolphins and two groups of Atlantic spotted dolphins.

No monitoring opportunities were available for explosive events in the NSWC PCD Study Area as none of these activities were conducted during this reporting period.

#### Adaptive Management

In general, adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) if monitoring efforts should be modified if new information suggests that such modifications are appropriate. All of the 5-year rules and LOAs issued to the Navy include an adaptive management

component, which includes an annual meeting between NMFS and the Navy. NMFS and the Navy conducted an adaptive management meeting in October, 2011, which representatives from the Marine Mammal Commission participated in, wherein we reviewed the Navy monitoring results through August 1, 2011, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. No changes were proposed for the 2012 monitoring plan for the NSWC PCD RDT&E activities.

#### Integrated Comprehensive Monitoring Report

The 2010 LOA required that the Navy update the ICMP Plan to reflect development in three areas, specifically: (1) identifying more specific monitoring sub-goals under the major goals that have been identified; (2) characterizing Navy Range Complexes and study areas within the context of the prioritization guidelines described in the ICMP Plan; and (3) continuing to develop data management, organization and access procedures. The Navy has updated the ICMP Plan as required. Because the ICMP is an evolving Program, we posted the ICMP on NMFS website: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

#### 2011 Monitoring Meeting

The regulations that established the framework for authorizing the taking of marine mammals incidental to Navy RDT&E activities required the Navy, with guidance and support from NMFS, to convene a Monitoring Workshop in 2011 (50 CFR 218.184(i)). The Marine Mammal Monitoring Workshop, which included scientists, representatives from non-governmental organizations, and Marine Mammal Commission staff, took place in June 2011. Pursuant to the regulations, this workshop presented a consolidated overview of monitoring activities conducted in 2010, as well as the outcomes of selected monitoring-related research. In

2010, the Navy convened a Scientific Advisory Group (SAG), comprised of experts in the fields of marine mammals and underwater acoustics, to review the Navy's current monitoring plans and make recommendations. The results of the SAG's review were also presented at the meeting. Participants engaged in open discussion of the lessons learned, and discussed how to improve the Navy's monitoring plan moving forward. If changes to monitoring approaches are identified at the workshop that can be implemented during the annual LOA renewal process and subsequent 5-year regulations, the Navy and NMFS will modify the Navy-wide monitoring plan and propose appropriate changes to the monitoring measures in specific LOAs for the different Range Complexes and study areas. For Range Complexes or study areas with substantive monitoring modifications, NMFS will subsequently publish proposed LOAs, with the modifications, in the Federal Register and solicit public input. After addressing public comments and making changes as appropriate, NMFS will issue new training area LOAs that reflect the new Navy-wide monitoring plan.

#### Authorization

The Navy complied with the requirements of the 2011 LOA. Based on our review of the Navy's annual mission activities report, which shows that the amount of sonar testing hours was below the annual authorized levels and that no underwater detonation and projectile firing were conducted during FY 2011, NMFS has determined that the effects to marine mammals that resulted from the 2011 NSWSC PCD RDT&E activities were likely lower than analyzed. Two monitoring activities were conducted during the period between August 2, 2010, and August 1, 2011, for sonar testing activities, as required by the 2011 LOA. The monitoring results showed that the RDT&E activities at the NSWSC PCD had no more than a negligible impact on the affected species or stock of marine mammals. There is no subsistence use of marine mammals



that could potentially be impacted by the Navy's activities at NSWC PCD. Further, the level of taking authorized in 2012 and 2013 for the Navy's NSWC PCD RDT&E activities is consistent with our previous findings made for the total taking allowed under the NSWC PCD regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2012 and 2013 RDT&E PCD activities will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a one-year LOA for the Navy's RDT&E activities conducted in the NSWC PCD Study Area from January 21, 2012, through January 20, 2013, followed by a new LOA that is effective from January 21, 2012, through January 20, 2014, after the NMFS' multi-year LOA regulations (77 FR 4917) become effective on February 1, 2012.

Dated: February 9, 2012.

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James H. Lecky, Director  
Office of Protected Resources  
National Marine Fisheries Service

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